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**1996 Wis Eth Bd 15**  
IMPROPER USE OF OFFICE; LEGISLATORS;  
MEALS, LODGING, TRAVEL AND ENTERTAINMENT

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A legislator may accept an offer from an organization funded by the federal and state governments to fly the legislator in its aircraft over the legislator's district, in the event of a disaster, so that the legislator can help in assessing damage and directing disaster relief to areas of greatest need.  
(November 13, 1996)

Facts

[1] This opinion is based upon these understandings:

- a. You are a member of the legislature and a state public official.
- b. An organization has recently contacted you.
- c. The organization is funded by the federal government and by state governments.
- d. The primary mission and activity of the organization is emergency services and disaster relief.
- e. The organization has offered to fly you in its aircraft should a disaster occur in your district so that you can help in assessing damage and directing disaster relief to areas of greatest need.

Questions

[2] The Ethics Board understands your question to be:

What, if any, restrictions does the Ethics Code impose on your acceptance of the organization's offer?

Discussion

[3] The provisions of the Ethics Code most pertinent to your question are §§19.45(2) and (3m), *Wisconsin Statutes*. Sections 19.45(2) and (3m) provide:

**19.45 Standards of conduct; state public officials. (2)** No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

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**(3m)** No state public official may accept or retain any transportation, lodging, meals, food or beverage, or reimbursement therefor, except in accordance with s. 19.56(3).

[4] Among the provisions of §19.56(3) is paragraph (c) which provides:

**19.56 Honorariums, fees and expenses. (3)** Notwithstanding s. 19.45:

A state public official may receive and retain from the state or on behalf of the state transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the state of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person.

[5] You are a state public official. The offer from the organization is being made to you because of your public position; thus, acceptance of the offer is a use of your office. The offer is one of substantial value; the cost to you of renting an airplane would be more than a token or inconsequential amount. The question then is whether the offer is of private benefit to you or is primarily of benefit to the state.\* 92 Wis Eth Bd 7; 91 Wis Eth Bd 2; 10 Op. Eth. Bd. 31 (1988); 6 Op. Eth. Bd. 37 (1983).

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\* Section 19.45(3m)'s proscription applies only to the receipt of the specific items mentioned therein. In the Ethics Board's view, conveying an official on a tour, where the official embarks and debarks at the same location, is not transportation within the meaning of the statute. As the Attorney General has opined in a similar context, "a tour of . . . facilities . . . does not involve transportation . . . 'transportation' means the business of carrying people or property from one place to another." 79 Op. Att'y Gen. 137, 137-38 (1990). Thus, if a flight simply leaves from an airport, flies you over a disaster area, and returns you to the airport, you have not received transportation within the meaning of the statute. In any event, if the statute does apply, the same analysis pertains under §19.56(3)(c) as under §19.45(2) to determine if the transportation primarily is for the state's benefit, and not primarily for the private benefit of the official.

[6] A number of factors indicate that the organization's offer, as you have described it, is primarily for the state's benefit and that any personal benefit would be incidental. The organization is a governmental agency, funded by the federal government. The primary mission and activity of the organization is emergency services and disaster relief. Our understanding is that the organization would not be providing transportation to you to your district but, rather, would fly you over your district, in the event of a disaster, to provide you an opportunity to survey the damage. The purpose of the flights would be to enable you to help in assessing damage and directing disaster relief to areas of greatest need.

#### Advice

The Ethics Board advises that you may accept the offer from the organization to fly you in its aircraft over your district, in the event of a disaster, so that you can help in assessing damage and directing disaster relief to areas of greatest need.